

SELF-REGULATION OF THE LEGAL PROFESSION IN CROATIA

The legal profession in Croatia is defined under Article 27 of the Croatian Constitution as an independent and autonomous profession providing legal assistance to anyone in accordance with the law. This constitutional provision is contained in the Chapter of the Constitution relating to the protection of fundamental human rights and freedoms placing the position of lawyers quite clearly as defenders of human rights and fundamental freedoms of citizens, of the rule of law, and as an important part of the judiciary.

However, regardless of the mentioned article, which should guarantee among other things also the self-regulation of the profession as one of the forms of independence and autonomy, various threats are faced by the legal profession in Croatia today. These threats include direct and indirect interferences both by state authorities and international institutions.

1) Direct and Indirect Interference with the Lawyers' Tariff

The Lawyers' Tariff is adopted by the Croatian Bar but it is subject to the preliminary consent by the Minister of Justice. Although this might appear as a formal consent it is never free of frictions and pressures. In fact, various forms of interference are exerted in the process of amendments to the Tariff based on the room for maneuver provided through this ministerial consent.

Other mechanisms of indirect interference are used by the State when adopting acts of major importance, which in practice abolish the possibility of application of the Tariff. So, for example, ex officio appointed defense counsels are entitled only to 30% of the remuneration provided for in the Tariff.

Another example of indirect interference of the legislative power with the Lawyers' Tariff are the provisions of the Public Procurement Act, which stipulate that no action performed by a lawyer may exceed the remuneration of HRK 500,00 (app. EUR 65,00). Even more importantly, by means of said Act all legal services provided by lawyers are subject to public procurement, except for representation in litigation. The fact of being subject to public procurement automatically abolishes the application of the Tariff allowing the market to regulate the profession.

Finally, at the moment further attempts to affect the Tariff are being made by the State in amending the Enforcement Act and the CBA is trying hard to preserve the Tariff as it is and to resist the current pressures.

2) Pressure by State Authorities

Various pressures are exerted by the Ministry of Economy in order to relief the burdens present in the economic sector. So for example there is the continuous pressure of the Ministry of Economy to abolish the registration fee for persons wishing to be admitted to the Register of Lawyers of the CBA. This is the consequence of the perceiving the legal profession as any other service on the market, and not as a part of the judiciary and the Croatian Bar Association cannot accept such position that the legal profession is an economic activity that needs further liberalization.

The Constitutional Court of the Republic of Croatia took the view that the purpose of the legal profession is primarily to provide professional legal assistance to those in need, that legal assistance, strictly defined as being the profession of lawyers, is an important factor of legal certainty and of a democratic Croatia governed by rule of law, and that the legal profession represents as such one of the aspects of the activity of the judiciary.

In the mentioned decision the Constitutional Court expressly stated that the provision of legal assistance by lawyers cannot be understood as an economic activity and cannot be subject, because of its specificity, to the laws of supply and demand on the market and that the specific rules governing the legal profession make its position significantly different from the position of economic activities on the market. We consider this position of the Constitutional Court of the Republic of Croatia to be in line with the tradition and with civil law. That the legal profession is a specific part of the admiration of justice arises from some sections in the decision of the ECHR case *Morice v France* (C-29369/10).

Although the co-operation with the Ministry of Justice has improved recently, other ministries fail to invite lawyers to participate in the work of the law-drafting group for their respective scope of activity. It should be noted that when appointed to the law-drafting group as representatives of the Croatian Bar Association Croatian lawyers offer their expertise free of charge. Through its

representatives the Croatian Bar Association actively participates in legislative activities, providing remarks to the Act on Amendments to the Administrative Courts Act, the Bar Examination Act, the Act on Amendments to the Civil Procedure Act, the Act on Amendments to the Criminal Procedure Act, and other acts, i.e. every time when the Croatian Bar Association was invited to participate in the work of law-drafting task groups.

3) Limiting the scope of activity of lawyers

Over the last few years certain competencies which were exclusively performed by lawyers have been passed over to notaries. These areas include enforcement proceedings which are conducted by notaries as well as inheritance proceedings, and the drafting of contracts in general.

The narrowing of the scope of activities performed by lawyers, the direct and indirect interference of the executive and legislative powers with what should be the exclusive authority of the Croatian Bar are increasingly threatening the independence and autonomy of the legal profession in Croatia, which will be one of the major objectives of the Croatian Bar, i.e. to preserve the autonomy and independence of the legal profession by confirming its role as part of the judiciary and not as a service on the market.

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